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January 24, 2003

The Honorable Orrin G. Hatch

Chairman: Senate Judiciary Committee
Dirksen Senate Office Building, Room 224
Washington, DC 20510

Honorable Chairman Hatch:

As an American citizen, a person with a disability and the State-wide Systems Advocate for the Independent Living Center of the Hudson Valley Inc. (ILCHV), I write respectfully to urge you not to confirm Jeffrey Sutton to the Sixth U.S. Circuit Court of Appeals. Jeffrey Sutton's activist efforts to limit Congressional authority in the area of disability rights has undermined your role in championing the Americans with Disabilities Act (ADA) and other laws expanding opportunities for the more than 50 million children and adults with disabilities and their families in the United States.

As a minority with a disability, I resent the reversal of my civil rights for the benefit of a privileged few. I truly question the confirmation of an individual who has directed such a premeditated pursuit of gutting the comprehensive civil rights that made our country unique. People with disabilities fared even worse as a protected class. Far-reaching civil rights were not provided until 1990 with the passage of the Americans with Disabilities Act (ADA). Mr. Sutton has worked very hard to deny us of our rights. Even more ironic, President George W. Bush is nominating a man to the Court who has decimated a law that was a hallmark of his father's Presidency.

In, *University of Alabama v. Garrett*, Mr. Sutton argued successfully that Congress did not have the authority under the Constitution to apply the ADA to States in employment discrimination suits for damages. He argued that unnecessary institutionalization should not be a violation of the ADA in the *Olmstead v. L.C.* case, but thankfully the Supreme Court declined to follow his lead in that case. Mr. Sutton's positions in these and other cases represent a view of Congress's authority that would dramatically restrict Congress's ability to pass laws protecting the rights of Americans with disabilities.

"It's important that we show the African-American community and other minorities that we are an inclusive, tolerant and diverse party," said Senator Olympia J. Snowe, Republican of Maine. "We have to show not just in words but in actions that we mean what we say on that subject. Now the question is, how do we best go about it?"

Judicial nominations were a principal item in a letter sent to President Bush in December by the Leadership Conference. The letter stated:



"We are very concerned that many individuals who you have nominated to serve on the federal bench have records of deep hostility to core civil rights principles and to Congress's historic role in protecting the civil rights of all Americans".

Here is an example of how Mr. Sutton's legacy has created dysfunction and a lack of accountability at the state level. A woman with a disability from Long Island waited years for affordable and accessible housing. She ended up winning a lottery and being the alternate for a newly constructed housing unit. She was offered the unit when the original person declined. Unfortunately, the upstairs part of the dwelling wasn't accessible because the builder and all other parties involved refused to construct readily accessible housing as mandated by Federal law. The housing agency then made a rash judgment of what they would give her as a final offer for her reasonable accommodation. The woman argued that she needed an accessible unit. Instead of meeting her needs, the agency sold the dwelling to another person without a disability.

In case after case, Mr. Sutton has advanced a radical agenda that, while couched in neutral legal terms of the federal - state relationship, in fact seeks nothing less than the dismantling of civil rights laws Congress has enacted over the past four decades that guarantee freedom and opportunity for people with disabilities. As a result, Mr. Sutton's efforts have led to limited access to Federal Court, minimized access to legal representation, compromised bureaucratic remedies, coupled with unchecked state violation of Federal law, fear, and retaliation. As an American, he is certainly entitled to his opinion, but he should never be allowed to serve on the bench of a Federal Court.

Mr. Chairman, you have been a long-time supporter of federal civil rights for Americans with disabilities. Working with Senators Dole, Kennedy, Harkin and others, you helped build the voluminous record of egregious discrimination that persuaded your colleagues to overwhelmingly support the ADA when it was enacted in 1990. In defense of that record, you filed an amicus brief in the Garrett case supporting the constitutionality of the ADA as applied to State employers. Why, then, confirm someone to a lifetime appointment to a federal appeals court whose view of the Constitution will erect new barriers for Americans with disabilities seeking to assert their rights in federal court?

Once again, I implore you in the strongest possible manner - on behalf of the Independent Living Center of the Hudson Valley, and millions of Americans with disabilities - not to confirm Jeffrey Sutton to the Sixth U.S. Circuit Court of Appeals.

Respectfully,


Clinton Perez, M.S.W.
Systems Advocate